

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman; and
Robert G. Taub

COMPETITIVE PRODUCT PRICES
PRIORITY MAIL
PRIORITY MAIL CONTRACT 99

Docket No. MC2015-9

COMPETITIVE PRODUCT PRICES
PRIORITY MAIL CONTRACT 99 (MC2015-9)
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2015-12

PUBLIC REPRESENTATIVE COMMENTS ON THE
POSTAL SERVICE REQUEST TO ADD PRIORITY MAIL CONTRACT 99 TO THE
COMPETITIVE PRODUCT LIST

(December 4, 2014)

The Public Representative hereby provides comments pursuant to Order No. 2264.¹ In that Order, the Commission established the above referenced dockets to receive comments from interested persons, including the undersigned Public Representative, regarding the Postal Service's Request to add Priority Mail Contract 99 to the competitive product list.² The Public Representative recommends that the Commission consider accepting the Postal Service's Request.

According to the Postal Service, Priority Mail Contract 99 is a competitive product featuring rates "not of general applicability" within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service also maintains that the prices and

¹ PRC Order No. 2264, Notice and Order Concerning the Addition of Priority Mail Contract 99 to the Competitive Product List, November 26, 2014 (Order).

² Request of the United States Postal Service to Add Priority Mail Contract 99 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, November 25, 2014 (Request).

classification underlying Contract 99 are supported by Governors' Decision No. 11-6.3.³ Further, the Postal Service asserts that the Statement of Supporting Justification (Statement) provides support for adding Contract 99 to the competitive product list and the compliance of the instant contract with 39 U.S.C. § 3633(a). Request, Attachment D.

The effective date for Contract 99 is one business day following the day on which the Commission issues all necessary regulatory approvals. Attachment B at 4. The contract will expire three years from the effective date unless either party terminates the contract on 30 days' prior written notification. *Id.*

COMMENTS

The Public Representative has reviewed the Postal Service's Request, the Statement of Supporting Justification, Contract 99 and the financial data filed under seal with the Postal Service's Request. Based upon that review, the Public Representative concludes that Priority Mail Contract 99 should be categorized as a competitive product and added to the competitive product list. In the first full year of Contract 99, it appears that sufficient revenues will be realized and thereby satisfy the requirements of 39 U.S.C. § 3633(a).

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Priority Mail Contract 99 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission consider whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

The Postal Service's Statement of Supporting Justification makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment

³ Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors' Decision No. 11-6).

D at 2. These assertions appear reasonable. Based upon the Statement, the Public Representative concludes that the Postal Service's Request to add Priority Mail Contract 99 to the competitive product list is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service's competitive prices must not result in the subsidization of competitive products by market dominant products; and must ensure that each competitive product will cover its attributable costs, and that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial data, the negotiated prices should generate sufficient revenues to cover costs during the first year of the contract and therefore meet the requirements of 39 U.S.C. § 3633(a).

As noted above, Contract 99 is expected to remain in effect for a period of three years. During this period, Contract 99, as presented in the non-public version thereof, includes a mechanism for the annual adjustment of prices to improve the likelihood that Contract 99 meets the requirements of 39 U.S.C. § 3633(a) for the first year. As stated in the contract, annual price adjustments are linked to the generally applicable prices for Priority Mail Commercial Plus. If Contract 99 costs do not outpace the associated revenues, it is likely to continue providing a contribution to institutional costs.

The Postal Service must file revenue and cost data for Contract 99, in future Annual Compliance Reports. This data will permit the Commission to annually review the financial results for Priority Mail Contract 99 in future Annual Compliance Determination (ACD) reports to ensure compliance with 39 U.S.C. § 3633(a).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

/s/ _____

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